

a) **DOV/16/01461 – Creation of amenity deck and erection of balustrades - 4 Beach Mews, Walmer**

Reason for report: Number of views contrary to officer's recommendation

b) **Summary of Recommendation**

Planning permission be granted.

c) **Planning Policies and Guidance**

Core Strategy (CS) Policies

- Policy DM1 states that development will not be permitted outside the settlement boundaries unless it is ancillary to existing development
- Policy DM15 seeks to protect the character and appearance of the countryside.

National Planning Policy Framework (NPPF)

- The NPPF has 12 core principles set out in paragraph 17 which amongst other things seek to secure high quality design and a good standard of amenity for all existing and future residents.
- NPPF – is relevant as the proposal should seek to be of a high design quality and take the opportunity to improve the visual quality and character of the area. Paragraphs 56-59, 61 and 64 seek to promote good design and resist poor design.

The Kent Design Guide (KDG)

- The Guide provides criteria and advice on providing well designed development and advises that context should form part of the decision making around design.

Relevant Planning History

- d)
- DOV/15/0906 – Granted, Installation of wider windows to second floor level (east elevation) and minor alteration to building footprint.
 - DOV/11/00664 – Granted, Erection of 7 dwellings and construction of a vehicular access. Condition 12 of this permission states:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), the flat roof area on any dwelling hereby permitted shall not be used as a balcony or terrace or any other form of external amenity space associated with the dwelling.

Reason: In order to avoid unacceptable overlooking and to preserve the character of the development.

e) **Consultee and Third Party Responses**

Parish Council: Unable to support the proposal and reached a decision – “other”.

Public Representations:

There have been 22 responses to the public consultation of the application. Of these, there are 14 objections and 8 responses in support. The objections can be summarised as follows:

- The proposal leads to additional unacceptable overlooking
- The proposal would give rise to loss of privacy to those properties along Wellington Parade
- The proposal contravenes the reasons behind Condition 12 of permission 11/00664
- The proposal contravenes the reasons behind Condition 11 of permission 11/00664 (this condition relates to altering windows, permission for which on this property was granted in 2015, as set out above)
- If granted, there would be precedent for other similar proposals

1. **The Site and the Proposal**

- 1.1 The application building is a detached house on a new housing development of 7 houses, built in a horse-shoe shape around a large, central area which is served by a centrally located access from Kingsdown Road. The development is prominent in the street by reason of the design, appearance and scale of the houses and their visually isolated position, separate to other development within the immediate area – with open/undeveloped land around the estate’s northern, eastern and southern boundaries. The site falls outside the village confines of Kingsdown and is therefore within the countryside.
- 1.2 The application property is located at the estate’s turning head – opposite the access from Kingsdown Road. The 7 dwellings on the estate have two types of roof design – Nos. 2, 4 and 6 have a flat roof at second storey level, with the addition of a flat roofed projecting element centrally located within the roof that provides further accommodation in the form of a single room. The other roof design type occurs at Nos. 1, 3, 5 and 7 and comprises a pitched roof over a two storey building, with little or no flat roofed areas.

- 1.3 The additional room on the roof of the application building is currently used as an office/gym/sitting area. It benefits from glazing in the front and rear elevations (facing towards Kingsdown Road and the rear of properties in Wellington Parade and the sea beyond). The room is quite well lit and well ventilated. It serves as ancillary living accommodation for the occupiers of the dwelling. On the rear elevation of this upper room (facing Wellington Parade), the glazed area comprises a set of doors that open inwards, with an iron balustrade across the opening so as to form a 'juliet' balcony – allowing views out but without increasing the floor space of the room.
- 1.4 A further supplementary drawing has been submitted by the applicant showing a section of the house and in particular the finished floor levels of the upper room and the flat roof of the house. The drawing demonstrates that the finished floor level of the room is slightly below the level of the flat roof area of the main house. A parapet wall as an extension of the rear elevation of the building rises above the level of the flat roof area by some 200mm.
- 1.5 The proposal seeks to use part of the flat roof area as a terrace, immediately beyond the Juliet balcony. The works proposed include decking this area of the roof, providing 1.7m high etched screens (which would prevent views through) to both sides of the decked area and erecting a 1.1m high screen along the parapet roof to the rear of the building. The height of this screen from finished roof level is 1.1m in total, but for the purposes of understanding the proposal and its potential impact the different sections of the screen can be considered as follows:
- Overall Height of Screen – 1.1m above the height of the flat roof of the main house
 - Height of Screen from the flat roof to the top of the parapet – 0.2m
 - Height of screen from the top of the parapet – 0.9m
 - Section of obscure (etched) glazing immediately above parapet – 0.65m
 - Section of screen with clear glazing which is located above the etched section – 0.25m

2. Main Issues

2.1 The main issues are:

- The impact of the proposal on upon residential amenity
- Whether a precedent would be set

3. **Assessment**

Residential Amenity

- 3.1 The applicant has been mindful of the number of objections that have been received against the proposal and has submitted a further drawing showing a Section of the proposed house and roof terrace with associated works, to provide supplementary information and to amend part of the proposal. This Section drawing assists in being able to assess the existing and future opportunities that exist for overlooking those properties in Wellington Parade and the additional harm that might ensue. The applicant is now proposing to etch (obscure glaze) part of the balustrade along the rear parapet wall (originally submitted this was shown as clear glazed) – whilst retaining its height at 1.1m.
- 3.2 Condition 12 of the original permission was imposed to prevent the occupiers of the 7 houses permitted or unrestricted rights to use their roof areas as a terrace for sitting out. As with many conditions that are imposed on planning permissions that remove certain development rights or allowances the purpose behind such conditions is to enable the Council to consider the impact of additional development or uses of land on a case by case basis. It does not necessarily follow that any future occupier is precluded from submitting a planning application to override or set aside a condition and it does not automatically follow that each further application for planning permission on the land or to vary or remove a condition imposed should be refused. Rather, the opportunity is afforded to the Council to be able to determine the application on the merits and circumstances of the particular case.
- 3.3 As Condition 12 applies to each and all the 7 dwellings on the estate, separate planning permission is required to use the roof of this building as a terrace, as any variation to Condition 12 would apply to all 7 houses and not just No.4 - the application property.
- 3.4 In essence therefore, the Council is being asked to consider the merits of whether the creation of a terraced area on the roof of No.4 causes harm to the public interest. The reason why the condition was imposed remains relevant, but an assessment needs to be made on this application as to whether the creation of the terrace would lead to material harm.
- 3.5 The inside and outside of the house has been inspected by the case officer and time has been spent standing on the roof to assist in the assessment of this application.
- 3.6 There are rear windows serving bedrooms on the first floor of the house. From these windows there are unimpeded views of No.96 and No.98 Wellington Parade in particular – their rear elevations, rear windows and rear gardens, with views of the sea beyond. From one bedroom window views of the rear elevation of No.94 are impeded by a

Holm Oak tree located on land between the application site boundary and the rear gardens of those properties fronting Wellington Parade. The distance to the rear elevations of those properties in Wellington Parade varies, but is some 59m at the nearest point. The rear garden depth of No.96 is some 29m. This is the garden that is mostly orientated behind the application site.

- 3.7 From the upper room, there remain unimpeded views of No.96 and No.98 Wellington Parade. The glazed door in this upper room is set back from the rear elevation of the building and therefore behind the line of windows in the first floor of this elevation.
- 3.8 From the roof area, there remain unimpeded views of the rear elevations and gardens of No.96 and no.98 (a distance in excess of 50m elevation to elevation).
- 3.9 On a like for like basis, there is no difference or additional viewing advantage gained from standing on the roof looking towards the Wellington Parade properties and standing within the first or second floor rooms looking out of the windows/door towards the rear of these properties.
- 3.10 On the basis of assessing overlooking, it is not considered that there would be a material difference between the existing and proposed views for the occupiers of the application property and therefore it is not considered that the existing overlooking of those properties would be materially changed.
- 3.11 Notwithstanding the non-material change in overlooking, it is considered that the use of the roof area as a terrace could lead to a greater perception of being overlooked and therefore a greater perception of a loss of privacy for those occupiers of No.96 and No.98 Wellington Parade. Views of other properties from this height are also available, but a further distance away and at a more acute angle of view. The reason for this increased perception is that the proposed use as a terrace would be an 'open' use (on the roof top); not contained behind the solid walls and windows of the house. Activity on the roof would also be noticeable.
- 3.12 Having considered the concerns raised, the applicants now propose to etch (obscure glaze) part of the balustrade along the rear parapet wall. This has two benefits: First, the obscure glazed balustrade (even at 1.1m in height) would help screen 'downward' views into the garden area, ground and first floor windows in the rear elevations of Nos. 96-98 Wellington Parade from within the upper floor room (thus limiting the existing overlooking of those properties) and; second, the obscure glazed balustrade would help screen the applicants using the terraced area.
- 3.13 The issue of whether the living conditions of the occupiers of those properties in Wellington Parade would be unduly harmed is finely

balanced for the following reasons:

- Ordinarily, as the distance between properties is well in excess of 21m, which often acts as a rule of thumb for the Council when considering overlooking and loss of privacy impacts, it would not normally be sustainable to refuse an application on the grounds of overlooking or loss of privacy for a distance of over 50m (window to window).
- There are terraces and balconies on the rear of a number of buildings within the immediate area and further afield with equivalent or shorter distances between properties.
- The existing windows within the building already provide unrestricted means of looking down and across into the gardens and at the rear elevations of No.96 and 98 (and less so to those other properties along Wellington Parade).
- The proposal, as amended, would reduce the opportunity for overlooking from within the upper floor room.
- The proposal, as amended, would limit the visibility of those sitting out on the terrace from the surrounding properties and immediate area, and would prevent views of the rear gardens and elevations of those properties in Wellington Parade by those sitting out on the terrace.
- Should the occupiers of the application property stand on the roof terrace this would increase the perception of those living in the properties to the east of being overlooked and increase their feeling of losing privacy.

3.14 On balance, and in view of the existing circumstances and distance to those nearest properties, Officers consider that the application should be approved.

Precedent

3.15 The planning application should be determined on its own merits. On this basis, the opportunity for a precedent to be set is unlikely because the application building is the only house on this estate that has a flat roofed area and looks directly towards the properties in Wellington Parade. Those other houses on the estate that have a flat roof and projecting roof element (Nos. 2 and 6) either look north across open land or look south across open land towards the flank boundary of the nearest property in Kingsdown Road. In any case, each planning application has to be considered on its own merits.

Other Matters

- 3.16 Policy DM1 - the proposal would be used for purposes incidental/ancillary to the use of the existing house. As such, the policy objectives are met.
- 3.17 Policy DM15 - the additional balustrades would be visible from the publically accessible land to the rear of the eastern boundary, and visible between the gaps in houses from views in Wellington Parade. However, due to the limited scale of the development, its design and proximity to these publically available views, it is not considered that the appearance of the rear of the application building at roof level would be unduly harmed. As such, it is considered that the character and appearance of the countryside would be safeguarded. For the above reason it is also considered that the proposal would not harm the character of the development.

Conclusion

- 3.18 Good design is a key aspect of sustainable development and should contribute positively to making better places for people. It is considered that the residential amenity of the occupiers of those properties in Wellington Parade would not be unduly harmed by the proposal. It is also considered that the design and appearance of the development will not be out of keeping with the host property and the overall character and appearance of the area.
- 3.19 It is considered that the proposal complies with the policies of the Development Plan, as set out above, and meets the design criteria set out in paragraphs 17, 56-59, 61 and 64 of the NPPF.

g)

Recommendation

- I PERMISSION BE GRANTED subject to conditions to include:
- i) Commencement of Development ii) Compliance with Drawings 02/48/2016 and 01/48/2016 iii) Requirement for the balustrades to be obscure glazed (incapable of clear views through) and installed before the terrace is first used, and retained thereafter iv) Requirement for the prior approval of the proposed decked terraced area – including materials and finished levels
- II Powers be delegated to the Head of Regeneration and Development to settle any necessary wording of conditions in line with the recommendations and as resolved by the Planning Committee.

Case Officer

Vic Hester

